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To ensure personal privacy with respect to financial information, to provide customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, to provide for strong enforcement of these rights, and to protect States' rights.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 1999

Mr. LEAHY (for himself, Mr. BRYAN, Mr. HARKIN, Mr. DURBIN, Mr. FEINGOLD, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To ensure personal privacy with respect to financial information, to provide customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, to provide for strong enforcement of these rights, and to protect States' rights.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Information
5 Privacy and Security Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the term “covered person” means—

4 (A) a person that is subject to the jurisdic-
5 tion of any of the Federal banking agencies;

6 (B) a broker or dealer, or a person associ-
7 ated with a broker or dealer, as those terms are
8 defined in the Securities Exchange Act of 1934;

9 (C) an investment advisor, as that term is
10 defined in section 202 of the Investment Advi-
11 sors Act of 1940, and any officer, director,
12 partner, copartner, or employee of such invest-
13 ment advisor; and

14 (D) an investment company, as that term
15 is defined in section 3 of the Investment Com-
16 pany Act of 1940, and any officer, director,
17 partner, copartner, or employee of such invest-
18 ment company; and

19 (2) the term “Federal financial regulatory au-
20 thorities” means—

21 (A) each of the Federal banking agencies,
22 as that term is defined in section 3(z) of the
23 Federal Deposit Insurance Act; and

24 (B) the Securities and Exchange Commis-
25 sion.

1 **SEC. 3. PRIVACY OF CONFIDENTIAL CUSTOMER INFORMA-**
2 **TION.**

3 (a) RULEMAKING.—The Federal financial regulatory
4 authorities shall jointly issue final rules to protect the pri-
5 vacy of confidential customer information relating to the
6 customers of covered persons, not later than 270 days
7 after the date of enactment of this Act (and shall issue
8 a notice of proposed rulemaking not later than 150 days
9 after the date of enactment of this Act), which rules
10 shall—

11 (1) define the term “confidential customer in-
12 formation” to be personally identifiable data that in-
13 cludes social security numbers, transactions, experi-
14 ences, rejections, balances, maturity dates, payouts,
15 and payout dates, of—

16 (A) deposit and trust accounts;

17 (B) certificates of deposit;

18 (C) securities holdings; and

19 (D) insurance policies;

20 (2) require that a covered person may not dis-
21 close or share any confidential customer information
22 to or with any affiliate or agent of that covered per-
23 son if the customer to whom the information relates
24 has been provided written notice, as described in
25 paragraphs (4) and (5), to the covered person pro-
26 hibiting such disclosure or sharing—

1 (A) with respect to an individual that be-
2 came a customer on or after the effective date
3 of such rules, at the time at which the business
4 relationship between the customer and the cov-
5 ered person is initiated; and

6 (B) with respect to an individual that was
7 a customer before the effective date of such
8 rules, at such time thereafter that provides a
9 reasonable and informed opportunity to the cus-
10 tomer to prohibit such disclosure or sharing;

11 (3) require that a covered person may not dis-
12 close or share any confidential customer information
13 to or with any person that is not an affiliate or
14 agent of that covered person unless the covered per-
15 son has first—

16 (A) given written notice to the customer to
17 whom the information relates, as described in
18 paragraphs (4) and (5); and

19 (B) obtained the informed written or elec-
20 tronic consent of that customer for such disclo-
21 sures or sharing;

22 (4) require that the covered person provide no-
23 tices and consent acknowledgments to customers, as
24 required by this section, in separate and easily iden-
25 tifiable and distinguishable form;

1 (5) require that the covered person provide no-
2 tice as required by this section to the customer to
3 whom the information relates that describes what
4 specific types of information would be disclosed or
5 shared, and under what general circumstances, to
6 what specific types of businesses or persons, and for
7 what specific types of purposes such information
8 could be disclosed or shared, and not less frequently
9 than annually thereafter;

10 (6) require that the customer to whom the in-
11 formation relates be provided with access to the con-
12 fidential customer information that could be dis-
13 closed or shared so that the information may be re-
14 viewed for accuracy and corrected or supplemented;

15 (7) require that, before a covered person may
16 use any confidential customer information provided
17 by a third party that engages, directly or indirectly,
18 in activities that are financial in nature, as deter-
19 mined by the Federal financial regulatory authori-
20 ties, the covered person shall take reasonable steps
21 to assure that procedures that are substantially
22 similar to those described in paragraphs (2) through
23 (6) have been followed by the provider of the infor-
24 mation (or an affiliate or agent of that provider);

1 (8) establish a means of examination for com-
2 pliance and enforcement of such rules and resolving
3 consumer complaints; and

4 (9) require financial institutions within the ju-
5 risdiction of the Federal financial regulatory
6 authorities—

7 (A) to establish appropriate administrative,
8 technical, and physical safeguards to ensure
9 protection of the security and confidentiality of
10 records of confidential customer information;
11 and

12 (B) to protect against any anticipated
13 threats or hazards to the security or integrity
14 of such records that could result in their unau-
15 thorized release or disclosure.

16 (b) LIMITATION.—The rules prescribed pursuant to
17 subsection (a) may not prohibit the release of confidential
18 customer information—

19 (1) that is essential to processing a specific fi-
20 nancial transaction that the customer to whom the
21 information relates has authorized;

22 (2) to a governmental, regulatory, or self-regu-
23 latory authority having jurisdiction over the covered
24 financial entity for examination, compliance, or other
25 authorized purposes;

1 (3) to a court of competent jurisdiction;

2 (4) to a consumer reporting agency, as defined
3 in section 603 of the Fair Credit Reporting Act for
4 inclusion in a consumer report that may be released
5 to a third party only for a purpose permissible under
6 section 604 of that Act; or

7 (5) that is not personally identifiable.

8 **SEC. 4. CIVIL LIABILITY FOR NONCOMPLIANCE.**

9 (a) IN GENERAL.—Any individual whose rights under
10 this Act have been knowingly or negligently violated may
11 bring a civil action to recover—

12 (1) such preliminary and equitable relief as the
13 court determines to be appropriate; and

14 (2) the greater of compensatory damages or liq-
15 uidated damages of \$5,000.

16 (b) PUNITIVE DAMAGES.—In any action brought
17 under this section in which the individual has prevailed
18 because of a knowing violation of a provision of this Act,
19 the court may, in addition to any relief awarded under
20 subsection (a), award such punitive damages as may be
21 warranted.

22 (c) ATTORNEY'S FEES.—In the case of a civil action
23 brought under subsection (a) in which the individual has
24 substantially prevailed, the court may assess against the
25 respondent a reasonable attorney's fee and other litigation

1 costs and expenses (including expert fees) reasonably in-
 2 curred.

3 (d) LIMITATION.—No action may be commenced
 4 under this section more than 3 years after the date on
 5 which the violation was or should reasonably have been
 6 discovered.

7 (e) AGENCY.—A principal is jointly and severally lia-
 8 ble with the principal’s agent for damages under this sec-
 9 tion for the actions of the principal’s agent acting within
 10 the scope of the agency.

11 (f) ADDITIONAL REMEDIES.—The equitable relief or
 12 damages that may be available under this section shall be
 13 in addition to any other lawful remedy or award available.

14 **SEC. 5. RELATION TO STATE LAWS.**

15 (a) IN GENERAL.—This Act shall not be construed
 16 as superseding, altering, or affecting the statutes, regula-
 17 tions, orders, or interpretations in effect in any State, ex-
 18 cept to the extent that such statutes, regulations, orders,
 19 or interpretations are inconsistent with the provisions of
 20 this Act, and then only to the extent of the inconsistency.

21 (b) GREATER PROTECTION UNDER STATE LAW.—
 22 For purposes of this Act, a State statute, regulation,
 23 order, or interpretation is not inconsistent with the provi-
 24 sions of this subtitle if the protection such statute, regula-

1 tion, order, or interpretation affords any person is greater
2 than the protection provided under this Act.

